

COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 02-33,
D.T.E. 02-34

PETITIONS OF
NEW ENGLAND POWER COMPANY
AND
CANAL ELECTRIC COMPANY,
CAMBRIDGE ELECTRIC LIGHT COMPANY, AND
COMMONWEALTH ELECTRIC COMPANY

FOR APPROVAL OF ASSET DIVESTITURE

DIRECT TESTIMONY OF

PAUL M. DABBAR

MAY 17, 2002

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Paul M. Dabbar. My business address is J.P. Morgan Securities Inc. (“JPMorgan”), 277 Park Avenue, 3rd Floor, New York, NY 10172.

Q. What is your position with JPMorgan?

A. I am a Vice President in the Natural Resources Group at JPMorgan. I am a specialist in mergers and acquisitions in the energy industry. I joined JPMorgan in August 1996.

Q. Please summarize your educational and professional background.

A. I graduated with merit from the United States Naval Academy with a B.S. in Marine Engineering. I also graduated from the United States Naval Nuclear Power School. Additionally, I earned a M.B.A. from Columbia Business School. Prior to joining JPMorgan, I served for five years as a nuclear submarine officer in the United States Navy in various engineering positions, including Acting Chief Engineer.

Q. Have you testified previously before the Department of Telecommunications and Energy (the “Department”)?

A. Yes.

Q. What is the purpose of your testimony?

JPMorgan is providing its testimony in support of the Massachusetts entities that are seeking approval of the sale of their Seabrook assets and their request for certain findings pursuant to §32(c) of the Public Utility Holding Company Act of 1935 (“1935 Act”). FPL Energy Seabrook, LLC (“FPLE Seabrook”), an indirect, wholly-owned subsidiary of FPL Energy, LLC, the independent power producer subsidiary of FPL Group, Inc. (“FPL Group”), agreed to purchase approximately 88.23% of the ownership interests in Seabrook pursuant to the terms of a Purchase and Sale Agreement, dated

April 13, 2002 (the “PSA”), by and among FPLE Seabrook, the Sellers (defined below) and North Atlantic Energy Service Corporation (“NAESCO”), the current operator of Seabrook. FPLE Seabrook’s affiliate, FPL Group Capital Inc., has guaranteed payment of the purchase price.

Q. On whose behalf are you submitting testimony?

A. I submit this testimony on behalf of JPMorgan as the exclusive asset sale manager, financial advisor and auction advisor to the State of New Hampshire Public Utilities Commission (the “NHPUC”) in coordination with the Connecticut Department of Public Utility Control (the “DPUC,” and together with the NHPUC, the “Commissions”). The auction involved the sale (the “Sale”) of certain ownership interests in the 1,161 MW Seabrook Nuclear Generating Station, including Unit 1 and the partially constructed Unit 2 (“Seabrook” or “Seabrook Station”) and related ancillary assets from the following entities: The Connecticut Light and Power Company (“CL&P”); The United Illuminating Company (“UI”); North Atlantic Energy Corporation (“NAEC”); New England Power Company (“NEP”); New Hampshire Electric Cooperative, Inc. (“NHEC”); Canal Electric Company (“Canal”); Great Bay Power Corporation (“GBP”); and Little Bay Power Corporation (“LBP”) (CL&P, UI, NAEC, NEP, NHEC, Canal, GBP and LBP collectively, the “Sellers”). The Sellers jointly own 88.23% of the ownership interest in Seabrook. The three joint owners not participating in the sale are Massachusetts Municipal Wholesale Electric Company, the Taunton Municipal Lighting Plant and the Hudson Massachusetts Light and Power Department. The Sale is being conducted in accordance with RSA 369-B:3, IV, (b), (13) and 2001 N.H. Laws 29:15 (the “NH Acts”), the “Agreement to Settle PSNH Restructuring,” executed on September 22, 2000, as approved in NHPUC Docket No. DE 99-099 (the “Settlement Agreement”) and Conn. Gen. Stat. §16-244g (the “CT Act”) and by the DPUC’s October 10, 2001 decision in Docket No. 00-12-13, *Application of The United Illuminating Company and The Connecticut Light and Power Company for Approval of Plan to Divest Nuclear Generation Assets—Seabrook Station* (“Divestiture Plan”). As provided in the NH Acts and the CT Act, the NHPUC and the DPUC have responsibility for the conduct of the Sale process on behalf of NAEC, CL&P and UI. The NHPUC and the DPUC entered

into a Memorandum of Understanding, dated July 10, 2001 (the “MOU”), which requires the NHPUC and the DPUC to coordinate their official duties and activities with respect to the Sale.

Q. Please summarize the remainder of your testimony.

A. The remainder of my testimony consists of four parts:

- Part II below provides an overview of JPMorgan’s role as the Commissions’ advisor in conducting the auction process (the “Auction”);
- Part III below describes the Auction;
- Part IV below provides a summary of the PSA; and
- Part V describes the key results of the Auction.

II. JPMORGAN’S ROLE AS AUCTION ADVISOR

Q. What role did JPMorgan play in the Auction?

A. As noted above, the NHPUC in coordination with the DPUC retained JPMorgan to act as exclusive asset sale manager, financial advisor, and auction advisor for the Commissions in accordance with the MOU.

Q. How was JPMorgan selected as the Auction advisor?

A. The NHPUC conducted a competitive solicitation process in accordance with its statutory responsibilities and directives, in coordination with the DPUC, to select an advisor to manage and oversee the Auction on behalf of the NHPUC. JPMorgan was the winner of that solicitation process and the NHPUC subsequently appointed JPMorgan as its independent sale manager for the sale of Seabrook Station.

Q. Did anyone supervise JPMorgan in its role as the DPUC's advisor?

A. Yes. The NHPUC designated certain staff representatives (the "NHPUC Staff") and the DPUC designated a DPUC staff team, the Utility Operations and Management Analysis Unit ("UOMA"), to oversee the Auction. JPMorgan worked closely with the NHPUC Staff and UOMA throughout the Auction and apprised both the NHPUC Staff and UOMA fully of all Auction activities.

Q. Please describe generally JPMorgan's activities as Auction advisor.

A. Under the supervision of the NHPUC Staff and UOMA and pursuant to and as authorized by an Engagement Agreement dated September 27, 2001 between JPMorgan and the NHPUC, JPMorgan entered into a Participation, Compensation and Indemnity Agreement dated November 16, 2001 (the "PCI") with each of the Sellers pursuant to which the Auction was conducted. The PCI established the protocols that governed the Auction with respect to JPMorgan and each of the Sellers. Among other things, JPMorgan developed a strategy for the Auction, coordinated the production of the confidential Offering Memorandum (the "OM") and related marketing materials, and formulated and contacted a list of potential interested parties. Once the Auction was underway, JPMorgan coordinated management presentations, site visits and responses to bidders' due diligence requests and questions. JPMorgan then reviewed the initial binding bids, performed bid analyses and along with NHPUC Staff and UOMA determined the leading bidders. Finally, JPMorgan, in consultation with the NHPUC Staff and UOMA, coordinated the final negotiations between the winning bidder in the Auction and the Sellers. These negotiations culminated in the execution of the final PSA. The Auction is discussed in more detail in Part III below.

Q. What experience did JPMorgan have with the sale of assets prior to being engaged for the sale of Seabrook Station?

A. JPMorgan is a full-service investment banking and securities firm. As part of its investment banking services, JPMorgan is continually engaged in the analysis of businesses and their assets in connection with, among other things, asset divestitures, and

has substantial experience in transactions similar to this divestiture. JPMorgan is a leader in M&A advisory around the globe. In 2000, we ranked second in global power mergers and acquisitions (“M&A”) transactions and fourth in global M&A across all sectors. JPMorgan has advised on the sale of ten nuclear units of the twelve announced in the U.S. since 2000. JPMorgan previously acted as the DPUC’s auction advisor in the successful sale of the Millstone Nuclear Power Station. JPMorgan also participated as auction advisor to the DPUC in the divestiture of the non-nuclear generating assets of CL&P and Western Massachusetts Electric Company and acted as the DPUC’s independent consultant and advisor in CL&P’s solicitation of Standard Offer Service Requirements. Moreover, JPMorgan was the exclusive advisor to the New York Power Authority regarding the sale of its nuclear power plants, James A. Fitzpatrick and Indian Point 3, which represent nearly 2,000 MW in capacity.

Q. What were the objectives of the Auction?

A. The objectives of the Auction were, among other things, to ensure that the sale process would be equitable and would maximize the value of the Sale of the assets of Seabrook (the “Assets”) through a competitive auction process.

Q. Were the objectives of the Auction met?

A. Yes. As discussed in Part V below, the Auction and the Auction results demonstrate that each of the requirements was satisfied.

III. THE AUCTION.

Q. Please describe the assets that were included in the Auction.

A. The assets included in the Auction were 88.23% of the ownership interests in Seabrook Station consisting of the 9.95766 % interest of NEP, the 3.52317 % interest of Canal, the 35.98201 % interest of NAEC, the 12.13240 % interest of GBP, the 2.89989 % interest of LBP, the 17.50000 % interest of UI, the 4.05985 % interest of CL&P and the 2.17391 % interest of NHEC. Also included in the Auction were the qualified and non-qualified

decommissioning trust funds of the Sellers and leases, easements, contracts, licenses and permits related to Seabrook Station, all as described in the PSA. In addition, the terms of the Auction required that the successful bidder assume most of the liabilities in relation to the Assets, including, without limitation, future decommissioning liability associated with Seabrook Station, environmental liabilities (exclusive of so-called “off-site” liabilities), all as more particularly set forth in the PSA.

Q. Please describe the Auction.

- A. The Auction began with an information-gathering stage, during which period JPMorgan solicited interest from entities known or believed to be potential bidders based upon their previous public statements, their position in the industry or their participation in recent sales of nuclear assets. This initial solicitation encompassed a broad array of companies in the energy industry, including existing nuclear plant operators and generating companies.

The next step in the Auction, which proceeded concurrently with the solicitation efforts described above, involved the preparation of the OM, describing the Assets and the Auction in detail. JPMorgan provided the OM to potential bidders who met the requirements for eligibility to participate in the Auction established by JPMorgan. To be eligible, potential bidders were required to sign a confidentiality agreement prepared by JPMorgan and to submit technical and financial qualifications that demonstrated their ability to purchase and operate the Seabrook Station.

Bidders meeting these eligibility requirements received a copy of the OM and access to the electronic “data room” that was set up for the Auction on a secure Internet site. This electronic data room contained the documents that were compiled for the sale process and a list of answers to “frequently asked questions” regarding Seabrook Station. These documents were also made available to bidders by CD ROM. Most of the due diligence in the Auction was intended to occur, and did occur, during the period leading up to the date designated for bid submittal (the “Due Diligence Phase”). During the Due Diligence Phase, bidders also participated in individual pre-bid meetings during which JPMorgan

and Seabrook management representatives presented major topics, addressed additional bidder questions, and gave bidders the opportunity to make a site visit. JPMorgan also invited bidders to submit confidential questions regarding the Assets to JPMorgan, and JPMorgan provided answers to each question only to the bidder who submitted the particular question.

During the Due Diligence Phase, JPMorgan prepared and provided to bidders certain prototype transaction documents upon which all bids were required to be based subject to the protocols hereinafter described. The prototype transaction documents included a form of Purchase and Sale Agreement, together with various exhibits and schedules thereto; a form of Interconnection Agreement; and several different forms of optional Power Purchase Agreements (collectively, the “Prototype Transaction Documents”). The Prototype Transaction Documents were developed by JPMorgan working together with the NHPUC Staff and UOMA and with substantial consultation and input from the Sellers under the supervision of JPMorgan’s counsel for purposes of the Auction, Brown Rudnick Berlack Israels LLP (“Brown Rudnick”). In order to obtain market input, JPMorgan afforded bidders an opportunity to provide comments on the Prototype Transaction Documents in advance of submitting their final binding bids, and, during the Due Diligence Phase, bidders also provided to JPMorgan other market feedback concerning the Auction procedures and protocol.

Under the Auction protocol originally specified in the OM, bidders were to be given an opportunity to submit limited power purchase agreements (as provided in prototype format by NEP, Canal and GBP) with their bids on a totally optional basis. These optional power purchase agreements (each a “PPA” and collectively, “PPAs”) could not be linked in any manner to the bid price otherwise offered for the Assets. During the Due Diligence Phase, however, JPMorgan received very strong market feedback from several bidders indicating that a change in Auction protocol to allow for more substantial PPAs that could be linked to the bid price for the Assets would significantly enhance the ability of the bidders to offer a competitive price in the Auction. In response to this strong market feedback, JPMorgan engaged in substantial discussions with the NHPUC Staff, UOMA and the Sellers culminating in a meeting among all such parties to determine the

appropriate manner of response to such market feedback. As a result, it was determined to modify the Auction protocol to permit bidders to include a PPA for the current energy and capacity of Seabrook Station (on a *pro rata* basis among all Sellers based on their respective ownership shares and pursuant to bilateral contracts) which could be linked to their bids for the Assets. It was also determined that the maximum length of such PPAs would be limited and that, all other factors being equal, bids that were not linked to PPAs would be preferred. Following the determination reached by the parties, an amendment to the OM was prepared to reflect this change and was circulated to prospective bidders. In all other respects, the Auction protocol was maintained in the manner set forth in the original OM.

In response to the pre-bid comments received from bidders on the Prototype Transaction Documents, Brown Rudnick prepared an analysis of all such comments and a summary of the legal issues raised by the comments for the benefit of JPMorgan, the NHPUC Staff, UOMA and the Sellers. The Sellers were afforded an opportunity to provide their own input on the bidder comments and a meeting was conducted among JPMorgan, the NHPUC Staff, UOMA and the Sellers to determine which, if any, of the bidder comments would be incorporated into the Prototype Transaction Documents to be included in the final bid package. In undertaking this analysis, the general protocol of JPMorgan, the NHPUC Staff and UOMA, consistent with the position of the Sellers, was to maintain a bias in favor of not making changes to the Prototype Transaction Documents. However, several changes were made as determined necessary by the parties for clarification purposes, in some cases, and, in other cases, to respond to significant market feedback. Revised Prototype Transaction Documents were then provided to bidders with instructions that such Prototype Transaction Documents be used as the basis for their binding bids with the requirement that they provide mark-ups to said Prototype Transaction Documents to indicate any requested variations from the terms thereof.

Q. How were contacts between bidder representatives and seller representatives managed?

A. Potential bidders agreed in their individual confidentiality agreements with JPMorgan not to contact the Commissions, the NHPUC Staff, UOMA or any of the owners of the Assets. JPMorgan made it clear to bidders that JPMorgan would handle all contacts to preserve the confidentiality of the bidder identities and the integrity of the Auction. Any potential bidder who failed to observe this protocol could have been disqualified from the Auction by JPMorgan. JPMorgan did not disclose the identity of any potential bidder to any of the Sellers' representatives, or to any other potential bidder, in any phase of the Auction except that JPMorgan necessarily revealed the identity of the leading bidder to the Sellers after the final negotiations were under way. During the Due Diligence Phase, JPMorgan assigned each potential bidder a code name to shield that bidder's identity. To preserve confidentiality and anonymity during site visits and individual pre-bid meetings, bidder representatives could not identify their company affiliation and JPMorgan instructed such bidder representatives not to wear articles of clothing or bring items on site that displayed company logos or otherwise revealed the bidders' identity. In addition, questions submitted by potential bidders were screened to ensure that they did not reveal the bidders' identity to the seller representatives who fielded the questions.

Q. Describe the bid process.

A. Following the Due Diligence Phase, qualified bidders submitted binding bids that were subject only to on-site verification due diligence. JPMorgan required bids to include specific information, including all of the following:

- A detailed description of the bidder's financial and operational qualifications to purchase and operate Seabrook Station,
- Separate purchase prices for: (a) nuclear fuel, (b) Seabrook Unit 2, (c) the NAEC real property, and (d) the Sellers' ownership shares in all other assets except those identified in (a), (b) and (c);

- Details and evidence of the availability of funds with which to pay the aggregate purchase price in cash, together with evidence of and the form of a guaranty or letter of credit from a satisfactorily creditworthy party to make payment of such purchase price;
- Evidence that the bidder had obtained all necessary internal corporate approvals to enter into and consummate the Sale;
- A detailed proposal of how the bidder intended to provide the required funding assurance to the New Hampshire Nuclear Decommissioning Financing Committee in connection with the decommissioning of Seabrook together with a demonstration of the financial capability to provide and perform such financial assurance.
- If desired by the bidder, a description of the specific terms to be included in the PPA for the output associated with Sellers' ownership interest in Seabrook;
- A financing plan and operating plan for Seabrook Station;
- A statement of acceptance with regard to the employee protection obligations specified in the draft PSA; and
- A full mark-up showing any proposed changes to the Prototype Transaction Documents.

JPMorgan received the binding bids on March 22, 2002.

Q. How were the binding bids evaluated?

A. JPMorgan reviewed and evaluated the bids according to criteria that were specified in the OM. In particular, JPMorgan evaluated bids to determine which potential buyers were most likely to enable JPMorgan and the Seabrook owners to achieve their objectives. These objectives included ensuring that the requirements in the NH Acts and the CT Act were satisfied. Other objectives included the desire to transfer all material assets, entitlements, obligations and liabilities associated with the Assets, and to maximize

opportunities for current Seabrook Station employees after the sale. An additional objective was to ensure that the transaction would close in a timely manner.

JPMorgan evaluated bids based upon an assessment of each bidder's financial, operational, safety and other qualifications, the present value of its binding bid, and its willingness to accept the material terms of the transaction as reflected in the Prototype Transaction Documents that were distributed to bidders. Brown Rudnick evaluated all requested changes to the Prototype Transaction Documents as reflected in the bidder markups contained with the final bid submittals to assess the legal issues raised by such requested changes and the degree of variance from the terms of the Prototype Transaction Documents proposed by each bidder.

Q. How did JPMorgan proceed after evaluating the initial binding bids?

- A. Based on its review and evaluation of the binding bids received as well as its general industry experience and expertise, JPMorgan prepared a written review of the bids which contained an analysis of each bid, a comparison of the bids to each other and certain references to other comparable sale transactions by way of general comparison. JPMorgan initially reviewed this bid analysis with the NHPUC Staff and UOMA and following that review met with the NHPUC Staff, UOMA and the Sellers to present and review the bid analysis and to present a recommendation as to the leading bidders. Concurrently, Brown Rudnick prepared and circulated to JPMorgan, the NHPUC Staff, UOMA and the Sellers an analysis of the requests for changes to the Prototype Transaction Documents made by the different bidders in their final bid submittals. During this entire analysis and recommendation phase, the identities of the bidders were not disclosed to the Sellers.

In advance of conducting a final meeting with the NHPUC Staff, UOMA and the Sellers, JPMorgan made available to the Sellers within a supervised setting, copies of the binding bid submittal documents (with the names of and all references to the potential buyers redacted out of such bids) from each of the bidders. The Sellers were not permitted to make any copies of the bid documents during that review. JPMorgan then convened a

meeting of the NHPUC Staff, UOMA and the Sellers at which it presented its detailed bid analysis, responded to questions from the Sellers and made its recommendation of the leading bids and the procedures to be followed in connection with seeking to conclude a transaction with one of the leading bidders. Under the terms of the PCI, each of the Sellers was then afforded the designated time period within which to advise JPMorgan whether it accepted the leading bid recommendations and desired to proceed to seek to conclude a transaction with one of the leading bidders. Within the time period designated, each of the Sellers responded to JPMorgan that it consented to seeking to conclude such a transaction and had obtained necessary internal approvals to do so.

Following the receipt of such consents from the Sellers, JPMorgan contacted the leading bidders to commence post-bid negotiations. At the same time, JPMorgan contacted the other bidders to retain their interest in moving forward in the Auction in the event that post-bid negotiations with one of the leading bidders were not successful. Following such initial contact and discussion, on-site verification due diligence was conducted and face-to-face final negotiations of the Prototype Transaction Documents commenced.

Q. Describe the negotiations.

- A. Under the terms of the PCI, the negotiating team (the “Negotiating Team”) designated to conduct final negotiations with the leading bidders consisted of JPMorgan, the NHPUC Staff and UOMA who were supported by JPMorgan’s Auction counsel, Brown Rudnick. The PCI further provided for the formation of a Selling Owner Committee during these final negotiations to receive and provide input as negotiations progressed and final execution form documents were being proposed. Said face-to-face negotiations led to the execution and delivery of final transaction documents on April 13, 2002. During the course of these negotiations, the Negotiating Team regularly reported to and obtained input from the Selling Owner Committee as to the status of negotiations and the proposed changes to the transaction documents resulting from such negotiations. When these negotiations were concluded, the Sellers were afforded a final opportunity to review and approve the forms of the final transaction documents prior to executing and delivering same. All Sellers approved the final documents and executed and delivered same on

April 13, 2002.

The identity of the leading bidder was disclosed to the Sellers for the first time when final negotiations were under way, however, this identity was maintained on a confidential basis by all parties to the Transaction until after the close of the financial markets on April 15, 2002, at which time the Transaction was publicly announced. As indicated, the FPLE Seabrook purchase price for the 88.23% ownership interest in Seabrook is \$836.6 million on the terms and conditions more particularly set out in the PSA.

IV. SUMMARY OF THE PURCHASE AND SALE AGREEMENT.

Q. Please provide a summary of the PSA beginning with the purchase price.

A. The total purchase price of \$836.6 million, as adjusted, is payable in cash at closing and is allocated under the PSA to the so-called Facility Purchase Price in the amount of \$746,710,000, which includes all of the acquired assets other than Nuclear Fuel, Seabrook Unit 2 and the NAEC Real Property. The purchase price of \$61,900,000 is allocated to Nuclear Fuel; the price of \$25,600,000 is allocated to Seabrook Unit 2; and the price of \$2,400,000 is allocated to the NAEC Real Property. Except for the price for NAEC Real Property which is allocated to NAEC, the separate purchase price for each of these components is allocated among the Sellers in accordance with their respective ownership interests in the different components. Finally, the PSA contains certain adjustment provisions by which the purchase price will be adjusted at the time of closing for such things as certain required expenditures incurred between the date of signing the PSA and the date of closing; a transmission credit deduction; the failure to make certain pre-approved capital expenditures; specific amounts of inventory, supplies and low level radioactive waste on hand at the date of closing; exercise or breach of restrictions on transfer; and, under certain circumstances for casualty loss, taking or Plant Material Adverse Effect which may occur between signing of the PSA and closing.

Q. Briefly describe the assets and liabilities which are included and excluded under the PSA.

A. The PSA provides for the transfer by the Sellers of their respective ownership shares of substantially all assets comprising Seabrook Station Unit 1 and Unit 2 and including applicable contracts, leases and permits relating to the operation of Seabrook Station. The PSA provides that the purchaser is to assume a comprehensive list of so called Assumed Liabilities relating to the ownership and/or operation of the facility including environmental liabilities (exclusive of so-called offsite environmental liabilities), nuclear and decommissioning liabilities. The PSA contains a specific listing of liabilities which are not to be assumed by the Buyer, including, offsite environmental liabilities, liabilities of the Sellers under contracts, licenses and/or permits accrued or relating to the period prior to closing and claims by third parties for damages arising from the pre-closing use or ownership of the acquired assets. These are intended by way of example of certain of the more significant provisions of the PSA in this subject area, and a complete list of assumed and excluded assets and liabilities is set out in Sections 2.1, 2.2, 2.3 and 2.4 of the PSA.

Q. Describe the provisions of the PSA relating to representations and warranties and for liability and indemnification in regard to breach of representations and warranties and other PSA obligations.

A. Section 3 of the PSA provides for a series of representations and warranties to be made from the Sellers and NAESCO in favor of the Buyer. Section 4 of the PSA provides for a series of representations and warranties to be made from the Buyer in favor of the Sellers. The representations and warranties on behalf of the Sellers are made by each Seller on a several basis in accordance with its proportionate ownership. PSA Section 9 addresses liability and indemnification in relation to representations and warranties and provides, with certain exceptions addressed below, that the representations and warranties will survive for a period of twelve (12) months following the closing. With the exceptions noted below, claims for breach of representations and warranties may only be asserted in the event, and only to the extent, that the loss therefrom exceeds one million dollars

(\$1,000,000), and the maximum aggregate liability for claims for breach of representations and warranties is limited to twenty million dollars (\$20,000,000). The above limitations shall not apply in regard to any intentional or fraudulent misrepresentation, any breach of the warranty relating to title to the assets and any breach of the warranty relating to the representation that there are no restrictions on the Sellers' ability to transfer their ownership interest in the facility.

As stated above the liability of each of the Sellers in relation to the representations and warranties is several and each of the Sellers also has several liability, based on its proportionate ownership, for representations and warranties made by NAESCO. The PSA provides that there shall be no recourse by any party as against NAESCO in connection with its representations and warranties.

With regard to claims for breach of provisions of the PSA by either the Sellers or the Buyer in regard to PSA provisions other than representations and warranties, the parties have reserved otherwise applicable rights and remedies during the governing statute of limitations period.

Q. Describe in summary form the covenants and undertakings of the parties under the PSA.

- A. These covenants and undertakings may be divided into two general areas. First, the PSA defines an interim period between signing and closing during which the parties will proceed in a diligent and cooperative manner to obtain all regulatory approvals necessary to conclude the transaction; will continue to operate the facility under appropriate and good utility practices; and will provide reasonable access to the Buyer during the interim period to assist in an orderly transition of ownership and operating responsibility at the time of closing. Secondly, the PSA provides for a series of covenants and obligations to be performed by the parties at or subsequent to the time of closing. Most significantly, the PSA requires that the Buyer offer employment to employees of NAESCO employed in relation to Seabrook in accordance with the required employee protection provision of the NH Acts, the CT Act and the Settlement Agreement. With regard to the

decommissioning of the facility, the PSA requires that the Sellers make payment of their respective required top-off amounts to their decommissioning trust funds at or before the time of closing and then transfer their entire decommissioning trust funds to the Buyer at closing. The Buyer undertakes to provide an appropriate future funding assurance subject to the approval of the NDFC at or before the time of closing and the Buyer also undertakes its ownership share of all future decommissioning responsibility for the facility.

Q. What are the conditions to closing, and can closings occur on a staged basis?

- A. The primary conditions to closing are the obtaining by the Sellers and the Buyer of all necessary regulatory approvals each requires to conclude the PSA transaction. The parties have advised us that they anticipate a period of approximately six (6) months to obtain these approvals. The PSA also requires as closing conditions that all representations and warranties of the parties contained in the PSA be true in all material respects at the time of closing and that all of the material covenants and undertakings to be performed at or before the time of closing are performed by the parties. Finally, in the event that a so-called Plant Material Adverse Effect occurs between the date of signing of the PSA and the closing date of a type which could reasonably be expected to cause a loss requiring an expenditure in excess of Fifty Million Dollars (\$50,000,000) within one (1) year, the Buyer is given the option not to close.

While it is the stated desire of all parties to conduct a single closing, the PSA provides that multiple closings may occur on a coordinated basis under stated terms and conditions so long as at least fifty-one percent (51%) or more of the ownership shares (which must include NAEC's ownership share) participate in the initial closing. Among other things, this staged closing protocol is intended to accommodate, in an orderly manner, certain unique timing issues related to the UI bond redemption.

Q. Under what circumstances may the parties terminate the PSA?

- A. The Buyer and Sellers' holding fifty-one percent (51%) or more of the aggregate ownership shares may terminate the PSA by mutual consent. The Buyer may terminate

the PSA if there is a material breach by the Sellers of their representations and warranties or covenants provided that the Sellers shall have an opportunity to cure any such breach following notice from the Buyer for up to a period of twelve (12) months from the date of signing of the PSA in relation to an initial closing and for up to fifteen (15) months from the date of signing of the PSA with respect to a subsequent closing. In addition, the Buyer shall have the right to terminate the PSA if all closing conditions (including the obtaining of necessary regulatory approvals) for the initial closing are not satisfied within eight (8) months from the date of signing of the PSA provided that the initial closing date may be extended for a period up to twelve (12) months from the date of signing of the PSA if the subject closing conditions can reasonably be satisfied within that additional period. With respect to any subsequent closing after the initial closing occurs, the PSA provides that all necessary closing conditions be satisfied within nine (9) months from the date of signing of the PSA provided that a subsequent closing date may be extended for a period up to fifteen (15) months from the date of signing of the PSA if the subject closing conditions can reasonably be satisfied within that additional period. Sellers holding at least eighty percent (80%) of the aggregate ownership shares can terminate the PSA in the event the Buyer fails to satisfy similar conditions to those described above applicable to the Buyer under the PSA.

I believe these describe the primary grounds for termination although the PSA should be consulted for additional termination provisions.

Q. Are there any other provisions of the PSA that you believe should be summarized?

- A. The PSA contains exhibits and detailed disclosure schedules. The current disclosure schedules are the most recent schedules prepared by the parties, however, they may be subject to future change during the interim period as contemplated by the parties in the PSA. Among the exhibits is the Interconnection and Operating Agreement by and between Public Service Company of New Hampshire and the Buyer. This Agreement will become effective upon the closing and sets forth the terms for providing interconnection service to the Buyer; for the maintenance and operation of the interconnection facilities; and for the demarcation and use of each of the parties'

property, assets and facilities in connection therewith. Also included as an exhibit is the Guaranty of FPL Group Capital Inc., the indirect parent company of the Buyer. Under the terms of the PSA the Buyer is required to provide evidence of the availability of funds with which to pay the purchase price provided for in the PSA and to provide a guaranty of that purchase price. The Buyer did provide such evidence to JPMorgan, and Exhibit H to the PSA constitutes the required guaranty. The Buyer provided to JPMorgan as part of its bid response financial information pertaining to FPL Group Capital Inc. demonstrating its financial capability and creditworthiness. FPL Group Capital has senior unsecured debt ratings of A- and A2 by Standard and Poor's and Moody's, respectively. It should be noted as well that the Buyer has provided a parent company guaranty that it will fully fund its ownership share of the projected cost of decommissioning in a manner consistent with New Hampshire statutory requirements.

One of the Sellers, NEP, is subject to a right of first refusal under the JOA with respect to the sale of its ownership interest in the Facility, and the PSA recognizes this circumstance. Specifically, the PSA contemplates that NEP will comply with the right of first refusal provisions of the JOA, and if one or more of the non-selling owners of Seabrook purchase NEP's ownership share, that ownership share shall then be excluded from the PSA, and the PSA purchase price shall be subject to adjustment but the Buyer shall thereafter conclude the PSA with the other Sellers. In the event the non-selling owners do not purchase the NEP ownership share under the terms and within the time provided by the JOA, the sale of NEP's ownership share shall remain included within the terms of the PSA.

V. KEY RESULTS OF THE AUCTION

Q. Explain how the Auction was held in a public and commercially reasonable manner.

A. The Auction was a formal, competitive process that was open to all qualified bidders. Bidders in the Auction were given complete and non-discriminatory access to data and information. The Auction was structured to obtain the best possible result by identifying a willing buyer who offered the highest price for the Assets and the best overall terms and conditions of the Sale. The Auction was consistent with other asset sales conducted by JPMorgan.

Q. Did the Auction maximize the value of the generation facilities being sold?

A. Yes. It was JPMorgan's intent to structure a transaction that maximized the sales proceeds to the fullest extent possible. The final sale price for all of the Assets offered in the Auction is \$836.6 million subject to certain adjustments at closing and deliverable fully in cash at closing. Applying the criteria for determining compliance with the minimum bid requirements and recognizing FPLE Seabrook's allocation of this price among the Units as required, this sale, excluding \$25.6 million for Unit 2 components, equates to a transaction multiple of \$792/kilowatt ("kW") of capacity purchased for Unit 1.

Q. Was the Auction conducted in accordance with normal, investment banking practices?

A. Yes. As discussed above, JPMorgan has extensive experience in auctioning all types of assets, including electric generating assets. The Auction process was conducted in accordance with the normal investment banking practices that JPMorgan routinely employs.

Q. How did the Auction ensure that bidders would comply with the employee protection measures that were proposed in the Divestiture Plan?

A. Bidders in the Auction were required to include in their binding bid packages a statement

of acceptance of the employee protection obligations that were described in the OM and specified in the draft PSA. These measures were based on the employee protection measures that were proposed in the Divestiture Plan.

Q. Did FPLE Seabrook agree to accept these obligations in its winning bid?

A. Yes. FPLE Seabrook will offer all plant employees who are employed at any time during the three (3) month period prior to the initial closing continued employment with comparable wages and benefits for a period of twelve months from the closing date. Additionally, FPLE Seabrook will permit plant employees that become FPLE Seabrook employees to retain their credited years of service for the purpose of determining eligibility under FPLE Seabrook's benefit plans.

Q. Did JPMorgan screen bidders to ensure that they have the proper qualifications to operate Seabrook Station safely?

A. Yes. As noted above, bidders were required to provide information demonstrating their financial and technical qualifications to purchase and operate Seabrook Station in order to receive the Offering Memorandum and participate in the Auction. These qualifications included safety qualifications. In addition, each bidder was required to submit with its binding bid very detailed information regarding its financial, operational and safety qualifications to acquire and safely operate Seabrook Station. These qualifications were considered in selecting the winning bidder.

Q. Based on FPLE Seabrook's compliance with these requirements, was JPMorgan satisfied that FPLE Seabrook would be able to demonstrate its qualifications to own and operate Seabrook Station?

A. Yes. FPLE Seabrook submitted all of the detailed information that was required in the Auction to demonstrate its financial, operational, safety and other qualifications to own and operate Seabrook Station, as described above. FPL Group Capital Inc., has guaranteed payment of the purchase price, and FPLE Seabrook provided to JPMorgan as part of its bid response financial information pertaining to FPL Group Capital Inc.

demonstrating its financial capability and creditworthiness. FPL Group Capital has senior unsecured debt ratings of A- and A2 by Standard and Poor's and Moody's, respectively. FPL Group has annual revenues of more than \$8 billion. Its regulated utility subsidiary, Florida Power & Light Company ("FP&L"), serves approximately four million customer accounts and operates two nuclear plants in Florida. FPL Energy, LLC, a FPL Group independent energy-generating subsidiary, currently operates power generation totaling more than 5,000 megawatts nationally. Within New England, FPL Energy operates generating stations with a total of 1,423 megawatts. FP&L's nuclear plants are similar in design to Seabrook and have consistently maintained the highest of safety and operational performance based upon the Nuclear Regulatory Commission's safety indicators as well as the World Association of Nuclear Operators' overall performance index.

Q. Please summarize why the Auction results are in the public interest?

A. The Auction achieved all of the following results: (i) FP&L Seabrook will purchase 88.23% of Seabrook Station for \$836.6 million, as adjusted, with payment deliverable fully in cash at closing; (ii) FP&L Seabrook will assume the decommissioning liability for the acquired portion of Seabrook, and will also assume the existing decommissioning trust funds of the Sellers; and (iii) the Sellers will not be required to enter into a PPA as part of the Sale. For all of the foregoing reasons, the Sale of Seabrook Station provides substantial net benefits to ratepayers.

Q. In your opinion, should the proposed sale of Seabrook Station be approved?

A. Yes.

Q. Does this conclude your testimony?

A. Yes.